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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/394,544	09/13/1999	MICHAEL HENRY POCOCK		4381

52546 7590 03/21/2006

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CANADA

EXAMINER

YENKE, BRIAN P

ART UNIT	PAPER NUMBER
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2614

DATE MAILED: 03/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/394,544	Applicant(s) POCOCK, MICHAEL HENRY	
	Examiner BRIAN P. YENKE	Art Unit 2614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 23 March 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-10, 12-18 and 20-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10, 12-18 and 20-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

#### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-10, 12-18 and 20-32 are rejected under 35 U.S.C. 103(a) as being obvious over US 6,674,460 and US 5,949,476.

The applied reference has a common inventor (Pocock) with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). This rejection might also be overcome

by showing that the reference is disqualified under 35 U.S.C. 103(c) as prior art in a rejection under 35 U.S.C. 103(a). See MPEP § 706.02(l)(1) and § 706.02(l)(2).

The specifications of both US 5,949,476 and US 6,674,460 both filed prior to the current application, has included the same subject matter (specification/drawings) as the pending application, minus the description of the audio circuit 37 of Figure 5 and minus the discussion of a carousel of images. A video image includes comprises snapshots/still images which when being transmitted in sequence (i.e. are a revolving set/carousel) become a moving image (i.e. video image), therefore it would be obvious to one of ordinary skill in the art to recognize that the images may be a revolving set.

### ***Double Patenting***

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-10 and 12-18, 20-32 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim respective claims of U.S. Patent No. 5,949,476 and US 6,674,460 as shown below. Although the conflicting claims are

not identical, they are not patentably distinct from each other because for the reasons as stated below.

In considering claims 1, 7-8, 10, 12 and 16-17, Patented claims 16, 17, 18 and 19 of US 5,949,476 meet the pending limitations. It is noted that limitation d of the pending claim recites ("continuously transmitted from a carousel of images") which is not explicitly recited in the patented claims. However, the patented claims do recite an interactive video presentation source, which produces interactive video images...to be transmitted... A video image includes comprises snapshots/still images which when being transmitted in sequence (i.e. are revolving set/carousel) become a moving image (i.e. video image), therefore the claims are not patentably distinct between one another.

In considering claim 2-4 and 9, the concept of a TV signal being encoded in a digital format is conventional in the art, thus being an obvious modification to one of ordinary skill in the art, since digital images provide more data (i.e. compression) utilizing the same/less bandwidth. Thus the examiner takes "OFFICIAL NOTICE" regarding the above claims.

In considering claims 5 and 13, the concept of a network comprising a telephone link is notoriously well known and thus the examiner takes "OFFICIAL NOTICE" regarding such a feature, since the use of such in an interactive environment provides the user/provider the ability to send/receive data thus allowing the user to subscribe/pay/buy services etc... offered via a display system.

In considering claims 6 and 14, the concept of a personal computer in capturing images is notoriously well known and thus the examiner takes "OFFICIAL NOTICE" regarding such a

Art Unit: 2614

feature, since the use of such in an interactive environment provides the user the ability to store relevant/pertinent data associated with the user's habits/preferences.

In considering claim 15,

The concept of sending instructions via a wireless link (i.e. remote) is notoriously well known in the art, since it provides the user the ability to perform an operation while being remotely located from a device, thus the examiner takes "OFFICIAL NOTICE" pertaining to such feature.

In considering claims 20-24,

Patented (US 6,674,460) claims 1, 24, 25 (the combination) and 30 meet the limitations.

It is noted that pending claim 20, recites "a plurality of interactive video presentation sources" whereas the patented claim recites "at least one video presentation source", the recitation of more than one is not inventive since the concept of "at least one" has been established and concurrently a presentation source provides presentations which are obviously based on some interactive (via user wishing to view a program etc..) thus not being patentably distinct.

Regarding the recitation of "carousel" refer to claim 1 above.

In considering claim 25,

Patented claim 30 of US 6,674,460 meets the claimed limitations. Patented claimed 30 does not recite the use of an interactive video presentation source however, the use of such is conventional as recited in claim 20 above. Regarding the recitation of "carousel" refer to claim 1 above.

In considering claim 26,

Patented claim 16 of US 5,949,476 meets the claimed limitations. Although the patented claims recite a "video motion detector" and the pending claims recite a "trigger means" regardless of what they are called they perform the same function as recited in the claims.

Regarding the recitation of "carousel" refer to claim 1 above.

In considering claim 27,

Patented claims 16-19 of US 5,949,476 meets the claimed limitations. Regarding the recitation of "carousel" refer to claim 1 above.

In considering claims 28-30,

Patented claim 18 of US 6,674,460 meets the claimed limitations. Regarding the interactive/plural refer claim 20 above. Regarding the recitation of "carousel" refer to claim 1 above.

In considering claim 31,

Patented claim 14 of US 5,949,476 meets the claimed limitations. Although, patented claim 14 recites an additional step of sending interactive instructions of the operator to the interactive TV system, and since the pending claim already recites an interactive system between a user and a TV system, the claim does not further narrow/change the claim, thus not being patentably distinct.

#### ***Conclusion***

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure—see newly cited references on attached form PTO-892.

Art Unit: 2614

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Yenke whose telephone number is (571)272-7359. The examiner work schedule is Monday-Thursday, 0730-1830 hrs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's Supervisor, John W. Miller, can be reached at (571)272-7352.

**Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks

Washington, D.C. 20231

**or faxed to:**

**(571)-273-8300**



Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 Customer Service Office whose telephone number is  
(703)305-HELP.

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Art Unit: 2614

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B.P.Y

12 October 2005



BRIAN YENKE  
PRIMARY EXAMINER